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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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ROGER S DYBVIG  
22 GREEN STREET  
DAYTON, OH 45402

EXAMINER

PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/228,109	BRADY, MARTIN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jason Prone	3724	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-5 and 7-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-5 and 7-13 is/are rejected.
- 7) ☒ Claim(s) 14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3-5, 7-9, 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. In regards to claims 3 and 7, the phrase "a sheath for a scissors on the back of said housing" is not clear. It is clear from the specification that the sheath is formed from the back wall of the housing together with a cover member and that the back wall of the housing and the back of the housing are the same item. It is uncertain how the back wall of the housing is capable of being "on" the back of the housing when the sheath is made up of the back wall of the housing. Basically, the back wall of the housing, which makes up part of the sheath, cannot be on the back of the housing when they are in fact the same item. The only structure that is on the back of the housing is the cover member, but the cover member alone does not qualify as the sheath. An item cannot be on itself.

4. In regards to claims 4 and 8, the phrases "a sheath for a scissors on the back of said housing" and "said sheath being formed by the back wall of the housing and a cover member connected to said back wall" are unclear. It is clear from the specification that the sheath is formed from the back wall of the housing together with a cover member and that the back wall of the housing and the back of the housing are the

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same item. It is uncertain how the back wall of the housing is capable of being "on" the back of the housing when the sheath is made up of the back wall of the housing.

Basically, the back wall of the housing, which makes up part of the sheath, cannot be on the back of the housing when they are in fact the same item. For example, a center portion of a table is not on the table, it is just part of the table. If the back wall forms the sheath, it is not possible for the sheath to be on the housing when it is part of the housing. The statement "and a cover member connected to said back wall" discloses that the cover is connected to the back wall, which is the back of the housing. If this is not the case it is uncertain how the back wall is connected to the back of the housing. Basically, when the cover member is connected to the back wall of the housing, a sheath is then formed by the cover member and the back wall or back of the housing.

5. In regards to claims 4 and 8, the terms "the back of the housing" and "the back wall of the housing" are unclear. It is uncertain if the back of the housing is the same structure as the back wall of the housing.

6. In regards to claims 11 and 13, the phrase "a sheath for a scissors on said housing" is unclear. See reasons why in paragraphs 4 and 5 above.

#### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 7, and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the PRESTO CAN OPENER PLUS (previously cited and, hereafter, to be called Presto) in view of Davies (4,152,831) and Nielsen et al. (5,791,608). Presto teaches an electric can opener having substantially everything claimed – including a jar opener mounted on the bottom wall of the can opener. See page 8 of the instructions in Presto for the jar opener. Presto does not teach a scissors releasably retained to the can opener such as by a sheath. However, Davies teaches that a scissors-like tool, which one of ordinary skill in the art can call scissors, may be attached to any surface where it is convenient via a sheath in which the sheath allows access to the scissors. See col. 2, lines 26-30, and see col. 3, lines 30-31 in Davies. Nielsen et al. teaches that a scissors may be secured via a sheath to a home appliance such as a machine in the form of a sewing machine, a refrigerator, or a washer or a dryer. See col. 2, lines 26-34 in Nielsen et al. The Presto can opener presents convenient surfaces such as its sides, top, and back and is clearly a home appliance that can be defined as a machine. Therefore, to provide a scissors removably retained to the can opener in Presto via a sheath is suggestive from Davies since the can opener presents available, convenient surfaces. This is further made obvious by Nielsen et al. for teaching that it would have been obvious to provide a sheathed scissors on any convenient surface where it might be desired for use and wherein that surface is a machine in the form of a home appliance. Thus, clearly, the collective teachings of Davies and Nielsen et al. teach that it would have been obvious to provide a scissors, and a sheath for the scissors, on any available surface of an appliance where such scissors and sheath might be deemed

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useful or is considered a desirable location for the use of the scissors and sheath. Also, dependant upon the orientation of the can opener, the "back" could be considered any of the walls. For example, if one was using the apparatus, disclosed by Presto, from the side, the left wall would be the front, the right wall would be the back, and the can opener portion would be the side. Since the Presto can opener is an appliance with available space, it would have been obvious to place a scissors and sheath on the can opener if one so desired. To place the sheath on the back of the housing of the can opener, as set forth in claims 3 and 7, would have been an obvious matter of choice of said available, convenient spaced as desired. Moreover, "back" can include several surfaces of the can opener. Further regarding claims 3 and 7, it is noted that the applied sheath of Davies includes various holders such as at 20, 21, 22, 23, or 36, or, 37, 38. Any of these holders would have been obvious in the combination to make the scissors readily removable, but secure, in its sheath.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the PRESTO CAN OPENER PLUS (previously cited and, hereafter, to be called Presto) in view of Zelson (6,253,662). Presto discloses an electric can opener having a housing (first page of the instructions in Presto under cabinet automatic can opener plus). However, Presto fails to disclose a holder on the housing capable of releasably retaining a scissors on the housing. Zelson teaches a holder on a housing capable of releasably retaining a scissors (40). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Presto's kitchen

appliance with a storage drawer, as taught by Zelson, to allow for the can opener appliance to releasably retain articles for storage.

***Allowable Subject Matter***

10. Claims 4, 5, 8, and 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

12. Applicant's arguments filed 03 August 2005 have been fully considered but they are not persuasive. In regards to the issues under 112, the phrase "a sheath for a scissors on the back of the housing" is unclear because of the term "on". The sheath is not on the back housing while it is partly formed by the back of the housing. The sheath is partly on the back of the housing due to the additional cover portion. Presto clearly discloses a can opener. Davies teaches that it is old and well known put a scissors-type tool in a convenient place via a sheath in which the sheath allows access to the scissors. Since either right or left wall could be considered the back wall dependant upon the orientation of the apparatus, it would have been obvious to put the sheath of Davies onto one of the walls of the Presto can opener. In addition, the Nielsen et al. further teaches that it is old and well known and provides a motivation to attach a scissors sheath to an appliance. The Zelson patent clearly teaches to Presto that it is

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old and well known to provide a storage drawer to a kitchen appliance for storage. This storage drawer is perfectly capable of holding a pair scissors.

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JP  
August 24, 2005

  
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Group 3700